

# **EXHIBIT A**

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
WACO DIVISION

ACTIVEPROSPECT, INC.,

Plaintiff,

v.

TECH PROSPER LLC a/k/a  
COMPLIANT LEAD a/k/a  
LEAD PROSPER and  
DATA PROSPER, LLC,

Defendants.

Civil Action No. 6:22-cv-00525-ADA

JURY TRIAL DEMANDED

**DECLARATION OF STEVE RAFFERTY**

I, Steve Rafferty, declare as follows:

1. I am the President and CEO of ActiveProspect, Inc. (“ActiveProspect”) and a named inventor of United States Patent No. 10,614,417 (the “’417 Patent”). I submit this declaration in support of ActiveProspect’s Motion for Preliminary Injunction.

2. Unless otherwise indicated, I have personal knowledge of the facts contained in this declaration and, if called upon to do so, I could and would testify competently to the matter set forth herein.

3. This declaration includes facts known to me at the time of the declaration. I reserve the right to supplement or amend these statements in the future, including through testimony given at any hearing on ActiveProspect’s Motion for Preliminary Injunction, deposition, or trial.

4. I received my bachelor’s degree in engineering from Tulane University in 1994 and my MBA from Harvard Business School in 1999. After graduating, I focused my career on online marketing.

5. Since 2002, I have focused on developing and working with products used by companies engaged in online lead generation. This has included tools to acquire, manage, and verify internet leads. As part of that, I have founded two different companies in this industry. The first company, Galt Media, was a performance-based internet marketing company which specialized in cost-per-lead marketing.

6. I am also a board member for the Consumer Consent Council, an industry association whose mission is to “educate and advocate on behalf of the buyers and sellers engaged in all forms of lead generation, ensuring that all participants deliver value and follow ethical as well as federal and state guidelines when conducting their business.”

7. As an inventor of the ’417 Patent and founder and CEO of ActiveProspect, I am familiar with the subject matter and claimed invention of the ’417 Patent, and I am familiar with all of ActiveProspect’s products, including TrustedForm, which is ActiveProspect’s commercial embodiment of the ’417 Patent.

8. In 2004, I founded ActiveProspect, a software-as-a-service company providing a suite of products used by companies engaged in online lead generation. The company currently provides three primary products: LeadConduit, TrustedForm, and LeadsBridge. With the creation of the Internet, consumers were able to fill-out forms online to request to be contacted about goods and services of interest. As online advertising moved to a performance-based model, companies increasingly engaged in Cost-Per-Lead advertising models. Lead management simplifies the process of acquiring and managing the opt-in leads of prospective customers for various services and products. I created ActiveProspect’s first product, LeadConduit, which was launched in 2004. LeadConduit is a lead management service that simplifies the process for tracking, filtering, integrating, and otherwise dealing with leads that are bought and sold.

9. Through my work at ActiveProspect, I learned of an issue regarding internet leads from lead purchasers who were using LeadConduit to manage their leads. Lead buyers complained that there was a large amount of fraudulent activity among lead sellers. For example, lead sellers were selling leads that were not for actual customers, or for customers who had not signed up for a particular service or product offering.

10. At ActiveProspect, I worked with the other named inventors of the '417 Patent to solve this problem. We eventually decided that we would become a third-party certification service that would independently verify whether the lead was from an actual consumer who opted-in for the service. By doing so, we could certify to the lead buyer that the lead was authentic, and the lead seller could charge a premium for selling leads that were independently verified.

11. On May 12, 2011, we filed U.S. Patent Application No. 13/106,641 entitled "System and Method for Electronic Lead Verification" for our invention that eventually became ActiveProspect's TrustedForm product.

12. The first commercially viable version of TrustedForm took me and at least two other engineers working at least [REDACTED] to develop. This first version was only a minimum viable product.

13. When we first released TrustedForm, it was a completely novel solution and there were few early adopters. TrustedForm was selected as one of four new technologies showcased at LeadsCon Las Vegas, an industry conference, in 2012. It took years of painstaking work explaining the benefits of TrustedForm to potential customers before it finally started gaining traction in the market. This growth was helped by the tightening of the Telephone Consumer Protection Act (TCPA) in 2013, which permits civil lawsuits against those who engage in unsolicited telemarketing activities. This led to increased demand for verified customer consent.

14. Today, TrustedForm verifies over [REDACTED] leads per month and is used by more than [REDACTED] companies to independently certify their internet leads.

15. ActiveProspect now allocates more than [REDACTED] employees solely to TrustedForm's success, and many more ActiveProspect employees support TrustedForm in addition to handling other work responsibilities.

16. It has taken [REDACTED] of dollars, [REDACTED] of hours, and [REDACTED] of employees to get TrustedForm to its current form. Since 2010, ActiveProspect has spent over [REDACTED] in operating costs on TrustedForm alone.

17. In the last seven to eight years, TrustedForm has been the primary driver of revenue for ActiveProspect, and now represents [REDACTED] of ActiveProspect's total revenue.

18. TrustedForm consistently receives substantial praise from industry members, including Defendant Data Prosper which described TrustedForm as "a vital tool for the modern marketer" and "the highest standard for independent proof of consent." **Exhibit 1.**

19. Moreover, TrustedForm routinely receives praise from customers, who describe the product as an "Easy to utilize tool to authenticate lead forms and provide additional TCPA protection," "A Must Have for Lead Acquisition," "second to none for TCPA compliance security," and "a new standard for what it means to have proof of TCPA compliance." **Exhibits 2 & 3.**

20. ActiveProspect received the LeadsCouncil 2018 Leader Award for Excellence in Compliance Service for TrustedForm, which was presented at the 2019 LeadsCon Las Vegas conference. ActiveProspect also received the 2021 MailCon Automation Choice Spotlight Award, which recognized ActiveProspect as an industry leader and pioneer.

21. ActiveProspect has strenuously protected our intellectual property rights behind TrustedForm. For example, we have never licensed the TrustedForm technology to anyone and

have no plans to do so. While we do have reseller agreements with other companies, each of those agreements clarifies that the reseller is not obtaining any rights to use ActiveProspect's intellectual property but, instead, is permitted only to resell the TrustedForm product.

22. As CEO of ActiveProspect, I am familiar with the pricing model for TrustedForm. ActiveProspect charges TrustedForm customers based on the number of lead certificates that are requested via an application programming interface (API) in a given month. An API request is a request made to TrustedForm that requests a TrustedForm certificate for a particular lead that has been generated.

23. Under TrustedForm's pricing model, customers are charged \$0.15 per certificate for the first 1,000 certificates per month, \$0.12 per certificate for the next 19,000 certificates, and \$0.10 per certificate for any additional certificates. **Exhibit 4.**

24. In March 2022, there were approximately [REDACTED] TrustedForm Certificate requests made by [REDACTED] customers. That represents an average of approximately [REDACTED] certificates per customer which would cost [REDACTED] under our standard pricing model.

25. In the online lead generation industry, in addition to ActiveProspect, the only other reputable, established company that offers a similar service to document proof of consent for third-party leads is Jornaya with its LeadiD product. ActiveProspect and Jornaya, as legitimate competitors, have created a niche portion of the online lead generation market dedicated to third-party lead verification. In addition, companies employ a variety of other less effective methods to document consent for internet leads that do not encroach on ActiveProspect's intellectual property.

26. While Jornaya's LeadiD product and ActiveProspect's TrustedForm product do compete in some respects, our lead verification products are able to co-exist because we do not provide identical products. As a result, numerous websites use TrustedForm and LeadiD in tandem

to ensure TCPA compliance. It is well known in the online lead generation industry that, “many of the biggest advertisers in the United States refuse to accept calls without an attached LeadID and TrustedForm Certificate attached.” **Exhibit 3.**

- “We provide 100% of our leads with Jornaya LeadID and ActiveProspect TrustedForm compliance solutions.” **Exhibit 5.**
- “Two gold standard compliance certificates from LeadID and TrustedForm back up our leads.” **Exhibit 6.**
- “We acquire and save the customers TCPA before they submit a request for a quote. Within seconds of processing the request, the prospect’s details are screened and verified for accuracy by Jornaya and TrustedForm.” **Exhibit 7.**
- “All of our sites use Jornaya’s LeadID product to provide independent third-party TCPA compliance verification. All of our sites also use TrustedForm to further certify our leads, and provide ‘video recordings’ of user experiences to our Advertisers.” **Exhibit 8.**

27. In 2021, one of ActiveProspect’s employees, Adam Chickman, informed me that Ross Breiman, who I understand to be the CEO of Lead Prosper (and is also the managing member of both Tech Prosper and Data Prosper), was potentially interested in ActiveProspect acquiring his company. I later met with Breiman and his team for a lunch while attending the Affiliate Summit East trade show in New York City.

28. At the lunch, on July 20, 2021, in New York City, I met Breiman and other members of his team, and we discussed ActiveProspect and his company, Lead Prosper. Breiman explained that he was aware of ActiveProspect and acknowledged that our company is a market leader in the lead management industry and in the niche lead verification marketplace.

29. At the lunch, although Breiman expressed appreciation for ActiveProspect’s technological contributions to the industry, he criticized the pricing of ActiveProspect’s products. He claimed that ActiveProspect’s LeadConduit product was too expensive and admitted that his

team had copied LeadConduit to create their own competing product, Lead Prosper, which they offer for a much lower price.

30. At the end of the lunch, we agreed to remain in touch and collaborate in the future where possible.

31. While Breiman had expressed his interest in an acquisition to Adam, I had no interest to acquire his business because I was not interested in acquiring a company that admittedly had copied ActiveProspect's own product, LeadConduit. Additionally, his company did not appear to have any unique intellectual property that would justify an acquisition. While I was not interested in an acquisition, I remained open to exploring ways to work together in the future. It is normal in our industry for competitors to also collaborate in areas where they do not compete. Unfortunately, we never applied for any patents for LeadConduit and there are a number of competitors that have entered the space, like Lead Prosper.

32. ActiveProspect eventually agreed to collaborate with Breiman by allowing his company, Tech Prosper, which does business as "Lead Prosper," to become an authorized reseller of TrustedForm. On September 21, 2021, Breiman signed ActiveProspect's Reseller Agreement on behalf of his company, Tech Prosper. **Exhibit 9.**

33. Before I had even met with Mr. Breiman, on February 27, 2020, Breiman signed-up for an account to use TrustedForm on behalf of yet another one of his companies, Data Prosper. **Exhibit 10.**

34. As an authorized reseller, ActiveProspect gave Lead Prosper guidance on how to price TrustedForm and assisted Lead Prosper in developing a go-to-market strategy for selling the product.



35. To my knowledge, Lead Prosper did not sell any TrustedForm certificates and generated no revenue for ActiveProspect. Lead Prosper also did not provide ActiveProspect any feedback on the TrustedForm product while under contract as a TrustedForm reseller.

36. The next time I encountered Lead Prosper was in March 2022, eight months after our lunch in New York, when I attended the LeadsCon trade show in Las Vegas, NV. While there, I visited Lead Prosper's booth, and saw that Lead Prosper had used half its booth to advertise a new product, Compliant Lead.

37. Based on Lead Prosper's advertising claims at the trade show, Compliant Lead appeared to be a copy of TrustedForm.

38. I took photos of Lead Prosper's booth, which are attached to this declaration as **Exhibits 11a–11d**.

39. I learned that Compliant Lead is advertised and offered for sale through a separate website, [compliantlead.com](http://compliantlead.com). **Exhibit 12**.

40. I reviewed the Compliant Lead website, including the terms of service. The Compliant Lead website includes pictures of an example "Token of Authentication" and a description of its product. From my review of the website, Compliant Lead has all of the same features and functions of ActiveProspect's patented TrustedForm product.

41. There are noticeable similarities in the terms of service for Compliant Lead and TrustedForm. For example, both are described as a "Lead certification service" that verifies "Internet Leads" using "proprietary JavaScript" that is deployed on webpages with "a contact request form." Both terms of service describe their respective certificates as including details about "the site visitor, the time of visit," and the site viewed. Overall, the entire portion of Compliant

Lead’s terms of service that describes the functionality of the product is substantially a copy of ActiveProspect’s description of its patented product as shown in the below chart:

<b>TrustedForm Terms of Service (Exhibit 13)</b>	<b>Compliant Lead Terms of Service (Exhibit 14)</b>
The TrustedForm Service is a Lead certification service that independently verifies the origin of Internet Leads through the use of proprietary JavaScript (“TrustedForm for Web”) installed on a web page, a software development kit (“SDK”) (“TrustedForm for Mobile Apps”) installed within a mobile application or application programming interface (API) requests to retrieve lead data from submissions to a Facebook Ad (“TrustedForm for Facebook Lead Ads”) containing a contact request form.	The Compliant Lead Service is a Lead certification service that autonomously certifies the provenance of Internet Leads using proprietary JavaScript ("Compliant Lead Script") deployed on a web page with a contact request form.
The TrustedForm for Web, TrustedForm for Mobile Apps, and TrustedForm for Facebook Lead Ads each issue a digital certificate (“TrustedForm Certificate”) that is passed with the Lead as an additional data field.	The Compliant Lead Script generates a digital token ("Compliant Lead Token"), which is given as an extra data field with the Lead.
The TrustedForm Certificate includes information about the site visitor who submitted a Lead, the time of visit, and the form visited, including what was presented to the consumer.	The Compliant Lead Token contains details on the site visitor, the time of visit, and the site viewed, as well as a recording of the lead interactions with the page as it appeared to the site visitor.
<b>TrustedForm Certificates automatically expire within 3 days of being issued unless either claimed or having the claiming period extended for a 3 month period by a TrustedForm Account holder or the TrustedForm application if a form submission is detected (the “Claiming Period”)</b>	Compliant Lead Tokens expire ninety (90) days after they are generated, unless stored by a Compliant Lead Account holder (the "Standard Token Expiration Period").
ActiveProspect does not control what information is requested from a site visitor in a contact request form.	Our Company has no jurisdiction over what data a site visitor enters into a contact request form.
Accordingly, ActiveProspect specifically disclaims any liability with respect to such information or its compliance or non-compliance with applicable laws and regulations, including the Telephone Consumer Protection Act or any rule or regulation implemented thereunder by the Federal Trade Commission, Federal Communication Commission, or other regulatory body.	As a result, We expressly disclaim any liability for such data or its compliance or noncompliance with relevant laws and regulations, such as the Telephone Consumer Protection Act and any rule or regulation put in place thereunder by the Federal Trade Commission, Federal Communication Commission, or other governing agency.

ActiveProspect does not provide legal advice, through the TrustedForm Service or otherwise, and any questions relating to the sufficiency of the TrustedForm Certificate as a record of consent should be addressed to an attorney with expertise in this area of law.	We do not give legal advice, whether through the Compliant Lead Service or elsewhere, and any issues about the adequacy of the Compliant Lead Token as a record of permission should be directed to a counsel who specializes in this area of law.
Additional terms and conditions regarding the TrustedForm Certificate are set forth below. For more information regarding the TrustedForm Certificate, please see the TrustedForm Script End User License Agreement ("TrustedForm Script EULA") available here: <a href="http://activeprospect.com/legal/trustedform-eula">http://activeprospect.com/legal/trustedform-eula</a> , and incorporated herein by reference.	Please review the Compliant Lead Script End User License Agreement ("Compliant Lead Script EULA") accessible on our website for additional data available on the Compliant Lead Token.
The TrustedForm Script EULA governs use of the TrustedForm Script by website operators and Account holders, to the extent they have added the TrustedForm Script to their website	The Compliant Lead Script EULA controls the usage of the Compliant Lead Script by website operators and Account holders, to the degree that the Compliant Lead Script has been installed to their webpage.

42. In addition, the color scheme used on Compliant Lead's website is similar to the original color scheme that ActiveProspect previously used to promote TrustedForm. **Exhibit 15.**

43. I have reviewed the pricing information on Compliant Lead's website. Based on this information, I understand that Compliant Lead charges \$0.10 per request for the first 5,000 requests in a month, \$0.09 per request for the next 5,000 requests, \$0.06 per request for the next 40,000 requests, and \$0.04 per request for any additional requests. **Exhibit 16.**

44. Compliant Lead's pricing model makes it at least 22% lower than TrustedForm's initial price, and more than [REDACTED] lower for our average customer's cost:

API Requests for a Certificate Per Month	TrustedForm	Compliant Lead	Difference as a Percentage
10,000	\$ 1,230.00	\$ 950.00	22.76%
15,000	\$ 1,830.00	\$ 1,250.00	31.69%
20,000	\$ 2,430.00	\$ 1,550.00	36.21%
30,000	\$ 3,430.00	\$ 2,150.00	37.32%
50,000	\$ 5,430.00	\$ 3,350.00	38.31%
75,000	\$ 7,930.00	\$ 4,350.00	45.15%

100,000	\$ 10,430.00	\$ 5,350.00	48.71%

45. I have reviewed Ross Breiman’s LinkedIn account and saw a post about the Compliant Lead launch. In one of the comments to the post, David Brook, co-founder of Inbounds.com, whose sites currently use TrustedForm to verify their leads, commented that he “Cannot wait to integrate with you guys!” **Exhibit 17.**

46. While ActiveProspect offers exceptional customer service and additional features that result in significant praise from customers, it will be difficult, if not impossible, for ActiveProspect to maintain its current pricing if we are forced to compete against a competitor offering a copy of our patented product for [REDACTED] less than we charge. I anticipate that ActiveProspect will be required to reduce the price we charge for our patented TrustedForm product to maintain or grow our current share of the lead verification market.

47. [REDACTED]

48. [REDACTED]

49. ActiveProspect also risks permanently losing customers if Compliant Lead is allowed to compete in the market with its lower price point. Both a lead seller and a lead buyer must use TrustedForm for lead verification for TrustedForm to generate revenue. As a result, if either a buyer or seller decides to switch to Compliant Lead, the effects could quickly multiply

into ActiveProspect losing additional customers when the seller or buyer on the other side of the transaction is forced to switch to Compliant Lead to complete the lead verification process.

50. Given the market dynamics of lead verification, once one buyer and seller switch, it makes it easier for other buyers and sellers to follow. Thus, the loss of even a single customer could lead to Compliant Lead spreading across the internet and displacing TrustedForm substantially or completely.

51. Finally, it will be difficult to calculate the lost profits associated with any lost customer. Unlike other Software as a Service (SaaS) business models, TrustedForm's revenue for a particular customer in each month can vary wildly based on completely unpredictable factors.

52. Because TrustedForm depends upon the public as a whole providing information to a lead seller, the types of customers that will purchase certain types of leads varies over time. For example, heavy flooding in one part of the country may lead to an increase in lead purchases for home contractors; at the same time, hail in a particular city may lead to an increase in lead purchases by roofing repair companies.

53. As our average customer remains with ActiveProspect for four years, and each customer's need for new leads changes over time, it is extremely difficult to accurately calculate the lost revenue from a lost customer.

54. I declare under penalty of perjury that the statements made in this declaration are true and correct.

Executed on May 24, 2022 in Austin, Texas.

  

---

Steve Rafferty